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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CORONAVIRUS REPORTER, CALID INC.,  
PRIMARY PRODUCTIONS LLC, DR.  
JEFFREY D. ISAACS, on behalf of  
themselves and all others similarly situated

Plaintiffs,

v.

APPLE INC., FEDERAL TRADE  
COMMISSION,

Defendants.

Case No. 3:21-CV-05567-EMC

**DEFENDANT APPLE INC.'S OPPOSITION  
TO PLAINTIFF'S REQUEST FOR  
JUDICIAL NOTICE**

The Honorable Edward M. Chen

1 The Court should reject Plaintiff Jeffrey Isaacs' Request for Judicial Notice (Dkt. 101). Judicial  
 2 notice does not extend to facts "subject to reasonable dispute." *Lee v. City of Los Angeles*, 250 F.3d  
 3 668, 689 (9th Cir. 2001) (quoting Fed. R. Evid. 201(b)). Courts therefore may take notice of the fact  
 4 that briefs are filed in other cases but may "not take judicial notice of the truth of [their] con-  
 5 tent." *Threshold Enterprises Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal.  
 6 2020); *accord Sundby v. Marquee Funding Grp., Inc.*, 2020 WL 434487, at \*2 (S.D. Cal. Jan. 28, 2020)  
 7 (a "brief's legal arguments cannot be noticed"). It is undisputed that the government filed an amicus  
 8 brief in *Epic Games, Inc. v. Apple Inc.*, No. 21-16506 (9th Cir.). Yet Isaacs asks this Court to take  
 9 judicial notice of "authoritative DOJ guidance"—in other words, to consider as fact the *legal argu-*  
 10 *ments* within a brief filed in a different case, in a different court, by an entity that is not a party to this  
 11 case, after the judgment was entered in this case. Dkt. 101. That is plainly impermissi-  
 12 ble. *See, e.g., Sundby*, 2020 WL 434487, at \*2 (declining to take judicial notice of the contents of an  
 13 amicus brief filed in a parallel Ninth Circuit case); *United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d  
 14 964, 974 (E.D. Cal. 2004) (similar); *Frank v. Chavez*, 65 F. Supp. 3d 677, 691 (N.D. Cal. 2014) (sim-  
 15 ilar).

16 Indeed, Isaacs' Request for Judicial Notice is an improper attempt to argue the merits of his  
 17 pending motion for reconsideration after the close of briefing. The Local Rules forbid "additional  
 18 memoranda, papers or letters" after a reply and make clear that even notice of "a relevant judicial  
 19 opinion" (which this is not) must be submitted "without argument." N.D. Cal. Civ. L.R. 7-3(d); *see*  
 20 *also Blye v. Cal. Supreme Court*, 2014 WL 295022, at \*1 (N.D. Cal. Jan. 21, 2014) ("A request for  
 21 judicial notice is not a proper vehicle for legal argument."). Isaacs' Request for Judicial Notice never-  
 22 theless contains five pages of argument purporting to "summarize[] the implications" of the DOJ's  
 23 brief. Dkt. 101 at 2. Apple will refrain from impermissible argument about the meritless positions  
 24 taken in Isaacs' Request, and the Court should disregard the improper argument therein. *See Fox Tel-*  
 25 *evision Stations, Inc. v. BarryDriller Content Sys., PLC*, 915 F. Supp. 2d 1138, 1142 (C.D. Cal. 2012)  
 26 (denying request for judicial notice of amicus briefs because it "is an implicit attempt" to circumvent  
 27 "page limits without leave").  
 28

1 Dated: January 31, 2022

Respectfully submitted,

2 By: /s/ Rachel S. Brass  
3 Rachel S. Brass

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